

Statement of the Case.

but that apart from any question which might have arisen from the proof as an entirety, and apart from the conflicting evidence as to the failure to give warning or proper signals, in the light of the ruling in *Chicago, Milwaukee &c. Railway v. Lowell*, 151 U. S. 209, it is obvious there was no room reasonably to claim that it should have been determined, as matter of law, that the railroad company had not been negligent.

The rule of the defendant company that "when one passenger train is standing at a station receiving or discharging passengers on double track no other train, either passenger or freight, will attempt to run past until the passenger train at the station has moved on or signal is given by the conductor of the standing train for them to come ahead, and the whistle must not be sounded while passing a passenger train on double track or sidings unless it is absolutely necessary," is a proper one, and applies to this case.

The duty owing by a railroad company to a passenger, actually or constructively in its care, is of such a character that the rules of law regulating the conduct of a traveller upon the highway when about to cross and the trespasser who ventures upon the tracks of a railroad company are not a proper criterion by which to determine whether or not a passenger who sustains injury in going upon the tracks of the railroad was guilty of contributory negligence.

A railroad company owes to one standing towards it in the relation of a passenger a different and higher degree of care from that which is due to mere trespassers or strangers, and it is conversely equally true that the passenger, under given conditions, has a right to rely upon the exercise by the road of care; and the question of whether or not he is negligent, under all circumstances, must be determined on due consideration of the obligations of both the company and the passenger.

When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determining the matter is for the jury.

This action was begun in the Supreme Court of the District of Columbia to recover damages for the killing of the plaintiff's intestate on June 22, 1893, at a suburban station of the city of Washington, located on the line of the defendant's road, known as University station.

It appeared from the evidence that at the station referred to the company operated a double track road, the tracks running substantially from north to south, the southerly direction leading to Washington and the northerly direction leading away from that city. The two tracks being side by side, one consequently lay to the west and the other to the east. The distance between the rails of each track was four feet eight

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and a half inches, while the distance between the east and west tracks, respectively, was seven feet five inches.

At the place in question the station building was on the outer side of the west track, and contained a waiting room, a ticket office and the other conveniences of a passenger station. Fronting the station building and beside the track was the necessary platform to enable passengers to enter or descend from any train which might there stop. In the space between the east and west track there was no platform or other facility for passengers either to enter or leave the train, but on the other side of the east track there was a platform which was uncovered, but which was manifestly constructed for the purpose of facilitating the entry into or departure from any train which might stop at that point on the east track. These east and west platforms were connected by a plank crossing, which came opposite the centre of the station building.

There was a road crossing adjoining the station, and the travel was such as seems to have necessitated the use of crossing gates and the employment by the railroad company of a gate watchman. On the east side of the track there was also a settlement known as Brookland, and several of the witnesses who testified at the trial lived in the immediate vicinity of the station in question.

Whilst, as we have said, the substantial direction of the two tracks was north and south, nevertheless the proof showed that in the southward direction of the tracks, that is, towards Washington, the tracks were not perfectly straight, but were somewhat curved. As to the foregoing facts, there seems from the bill of exceptions to have been no conflict of proof.

There was proof tending to show that on the morning of the accident, at about twenty minutes past seven o'clock, the deceased alighted at University station from a local train bound to Washington. One of the stopping points of such train on the way to University station was a small station known as Forest Glen. After attending to some business in the neighborhood of University station, Collis returned to that station at about half-past eight o'clock on the same morning. He was then seen engaged in conversation with several persons

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in or about the station building, which we have already described. There was a local train bound out from Washington, that is, going north, which was scheduled to stop at Forest Glen, and which was due to arrive at University station at *nine* minutes past nine o'clock, whilst there was an express train bound to Washington scheduled to pass the same station at *eleven* minutes past nine. The proof tended to show that the local train arrived at University station a few minutes late, and that either as it was stopping at the east platform or after it had actually stopped there Collis, who had in his possession a return-trip ticket from University station to Forest Glen, hurriedly went from under the arch of the station building in the direction of the local train. There was conflict in the proof as to whether, when Collis started, the local train had actually stopped on the east track or was slowing down. There was also conflict in the evidence as to where Collis was when he started to the local train. The engineer of the express train testified "that after he got by the whistling post he saw Mr. Collis standing on the platform, but did not think that Collis would go over," and that it was not until Collis started across that he gave the danger signals; whereas another witness for the defence testified that Collis was sitting behind the arch of the station building when the local train arrived, and as it did so he went around the station building "to cross the track and get on his train," and "started straight across, did not stop at all and did not look in either direction." There was conflict also in the proof as to whether, in crossing towards the train, Collis went on the crosswalk connecting the two platforms, or diagonally upon the track away from the board walk and bearing towards the local train. Some of the witnesses testified that as he started toward the local train, not being opposite a platform by which to enter a coach, he obliquely directed his course towards the south as though to reach the platform and steps of a car on the local train, whilst other testimony tended to show that as he came out from under the arch and around the building he pursued a course directly across the track towards the local train.

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The testimony moreover established that whilst Collis was making the movement towards the local train, in one or the other of the modes above described, the express came down the west track, past the station, running by the standing or stopping local train at the rate of between forty and forty-five miles an hour, and that by the train so moving Collis was struck and killed. The proof further tended to show that there was a clear view of the track going north from the station for a considerable distance, and that there was a whistling post for the station located fifteen or sixteen hundred feet beyond the station. There was no proof, however, showing that a view of the rapidly moving express train was possible from under the archway of the station from which some of the proof tended to show Collis came on his way towards the local train.

There was conflict in the testimony as to whether the express train whistled at the whistling post. Some of the witnesses testified that the only signal given as the train approached the station was the danger signal which was sounded when the engine was only fifty or sixty feet from the point where Collis was killed; while others testified that a long blast for the station was sounded at the whistling post. There was no proof tending to show that any notice or warning, by sign or otherwise, was given, of the danger which might be incurred if a passenger attempted to cross the west track in order to board a train on the east track, nor was there any proof offered tending to show that any warning or notice was given, either by the ticket agent, gate watchman or the employes of the local train, to passengers actually in waiting at the station, of the fact that the express train was due under its schedule, and, if on time, would pass the station without stopping, and almost simultaneously with the arrival of the local train.

It was proven that a book of rules issued by the company to its employes contained the following:

"No. 441. When one passenger train is standing at a station receiving or discharging passengers on double track no other train, either passenger or freight, will attempt to

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run past until the passenger train at the station has moved on or signal is given by the conductor of the standing train for them to come ahead, and the whistle must not be sounded while passing a passenger train on double track or sidings unless it is absolutely necessary."

While the engineer of the express train testified that coming down towards University station he saw the local train and did not know whether it was moving or had stopped entirely, or was going to stop or not, he also admitted that he knew of the existence of Rule 441, but that "it was impossible to carry out the rule and make schedule time, and that the rule never was carried out."

At the close of the evidence for both parties the defendant requested a peremptory instruction in his favor, which the court gave, and by reason thereof the jury returned a verdict in favor of the defendant. From the judgment thereupon entered an appeal was taken to the Court of Appeals of the District of Columbia, where the judgment was affirmed. The case was then brought into this court by writ of error.

Mr. Rodolphe Claughton for plaintiff in error.

Mr. G. E. Hamilton for defendant in error. *Mr. M. J. Colbert* was on his brief.

MR. JUSTICE WHITE, after stating the case, delivered the opinion of the court.

The peremptory instruction by the trial court and the affirmance of its action by the appellate court manifestly proceeded not on the theory that, as a matter of law, there was no negligence on the part of the defendant, but that the proof of contributory negligence on the part of the plaintiff was so conclusive as to leave no question for the consideration of the jury. Indeed, apart from any question which may have arisen from the proof as an entirety, and apart from the conflicting evidence as to the failure to give warning or proper signals, in the light of the ruling in *Chicago, Mil-*

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waukeec &c. Railway v. Lowell, 151 U. S. 209, it is obvious there was no room reasonably to claim that it should have been determined, as matter of law, that the railroad company had not been negligent. In the *Lowell case*, as in this, it was shown that a rule of the company, applicable where double tracks were operated, prohibited any train, either passenger or freight, from attempting to run past a passenger train standing at a station for the purpose of receiving or discharging passengers, until the passenger train at the station had moved on, or signal was given by the conductor of the standing train for the other train to come ahead. Speaking of such a rule, and after declaring that it could not be seriously contended that the defendant was free from fault in failing to stop its train, in compliance with its own rule, the court said (page 217): "In view of the frequency of accidents occurring to passengers crossing one track at a station, after alighting from a train standing upon another track, the rule is doubtless a proper one, and if it had been observed on that evening this accident would probably not have occurred."

The cogency of this language applies with equal force to the state of facts disclosed in this record, where the station in which was the waiting room was so situated, and the trains of the company so operated, that passengers obliged to board a train which was to arrive and depart on the east track could not do so without crossing the west track, over which a train bound in an opposite direction was momentarily to arrive. If the stopping of a train at a station to put off a passenger, as held in the *Lowell case*, may, under certain circumstances, justify the passenger in presuming that it is safe for him to alight from the train away from a platform, and does not impose upon him in so doing the same degree of care and caution as would be imposed on him if he were not a passenger, it follows, necessarily, that the same rule would apply to one waiting at a station to take a train and who approaches the train he is to take when it arrives at the station.

The learned court below, in affirming the judgment of the trial court, principally rested its conclusion on the ruling in *Elliott v. Chicago, Milwaukee & St. Paul Railway*, 150 U. S.

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245, and the authorities in that case referred to. But there the question for determination was the negligence of one not a passenger.

The duty owing by a railroad company to a passenger, actually or constructively in its care, is of such a character that the rules of law regulating the conduct of a traveller upon the highway when about to cross and the trespasser who ventures upon the tracks of a railroad company are not a proper criterion by which to determine whether or not a passenger who sustains injury in going upon the tracks of the railroad was guilty of contributory negligence. A railroad company owes to one standing towards it in the relation of a passenger a different and higher degree of care from that which is due to mere trespassers or strangers, and it is conversely equally true that the passenger, under given conditions, has a right to rely upon the exercise by the road of care; and the question of whether or not he is negligent, under all circumstances, must be determined on due consideration of the obligations of both the company and the passenger. As said by the Court of Appeals of New York in *Terry v. Jewett*, 78 N. Y. 338, 344:

"There is a difference between the care and caution demanded in crossing a railroad track on a highway and in crossing while at a depot of a railroad company to reach the cars. No absolute rule can be laid down to govern the passenger in the latter case under all circumstances. While a passenger has a right to pass from the depot to the train on which such passenger intends to travel, and the company should furnish reasonable and adequate protection against accident in the enjoyment of this privilege, the passenger is bound to exercise proper care, prudence and caution in avoiding danger. The degree of care and caution must be governed in all cases by the extent of the peril to be encountered and the circumstances attending the exposure."

And in the case before the court it was held to be a question for the jury, under all the circumstances, whether the plaintiff was chargeable with contributory negligence.

The doctrine of the *Terry case* was approved in *Brassell v. New York Central &c. Railroad*, 84 N. Y. 246, and is sup-

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ported by the following authorities: *Atchison &c. Railroad v. Shean*, 18 Colorado, 368; *Phil. Wil. & Balt. Railroad v. Anderson*, 72 Maryland, 519, 530; *Balt. & Ohio Railroad v. State*, 60 Maryland, 449, 463, 465; *Pennsylvania Railroad v. White*, 88 Penn. St. 327, 333, 334; *Jewett v. Klein*, 27 N. J. Eq. 550; *Wheelock v. Boston & Albany Railroad*, 105 Mass. 203.

To concede the rule, and, in a given case, to take a passenger beyond its protection by holding that one who goes in proper time to a station for the purpose of taking a train over the road and has a ticket for travel thereon, is not to be considered as a passenger until he has manifested by some outward act his intention to board a train and become a passenger, is to admit the rule on the one hand and on the other to deny it. It is also clear that to say that one who goes to a station to take a train must exercise the same circumspection and care as a traveller on the highway or a trespasser, unless by some implication the corporation has invited the person to deport himself as a passenger, and that such implication must be determined as matter of law by the court and not of fact by the jury, is, in effect, under the form of a qualification, to destroy the rule.

The situation of the tracks, the location of the station building and the waiting room, the coming of the local train and its stopping to receive passengers in a position which required the latter to cross a track in order to reach the train, involved necessarily a condition of things, which under one view of the testimony constituted an implied invitation to the passenger to follow the only course which he could have followed in order to take the train, that is, to cross the track to the waiting train. Whilst it is true, as was said in *Terry v. Jewett*, *supra*, that such implied invitation would not absolve a passenger from the duty to exercise care and caution in avoiding danger, nevertheless it certainly would justify him in assuming that, in holding out the invitation to board the train, the corporation had not so arranged its business as to expose him to the hazard of danger to life and limb unless he exercised the very highest degree of care and caution.

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The railroad, under such circumstances, in giving the invitation, must necessarily be presumed to have taken into view the state of mind and of conduct which would be engendered by the invitation, and the passenger, on the other hand, would have a right to presume that in giving the invitation the railroad itself had arranged for the operation of its trains with proper care. The doctrine finds a very clear expression in a passage in the opinion in the *Terry case*, already referred to, where it was said (p. 342):

"It may be assumed that a railroad corporation, in the exercise of ordinary care, so regulates the running of its trains that the road is free from interruption or obstruction where passenger trains stop at a station to receive and deliver passengers. Any other system would be dangerous to human life, and impose great risks upon those who might have occasion to travel on the railroad."

When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determination of the matter is for the jury. *Grand Trunk Railway v. Ives*, 144 U. S. 408, 417; *Baltimore & Ohio Railroad v. Griffith*, 159 U. S. 603, 611; *Texas & Pacific Railway v. Gentry*, 163 U. S. 353, 368. A like doctrine was thus expressed by the Supreme Court of Pennsylvania in *Pennsylvania Railroad Co. v. White*, 88 Penn. St. 327, 333, a case in many respects analogous to the present one:

"Negligence has been defined to be 'the absence of care according to the circumstances,' and is always a question for the jury when there is reasonable doubt as to the facts, or as to the inferences to be drawn from them. When the measure of duty is ordinary and reasonable care, and the degree of care varies according to circumstances, the question of negligence is necessarily for the jury."

We think the case presented by the record is not one where the facts inferable from the evidence were such that all reasonable men would, of necessity, draw the same conclusion from them, and the question of negligence was not, therefore, one of law for the court.

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It is, therefore, ordered that the judgment be
*Reversed, and the case remanded, with directions to grant a
new trial, and for further proceedings in conformity to
law.*

MR. JUSTICE BREWER is of the opinion that the deceased was
guilty of contributory negligence.

END OF CASE

WARNER v. BALTIMORE AND OHIO RAILROAD COMPANY.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 82. Argued November 1, 2, 1897. — Decided November 29, 1897.

This was an action to recover for the death of plaintiff's testator, caused by a train striking him while crossing the track of defendant's road. The results of the evidence at the trial are condensed in the statement of the case, below, which cannot well be abridged. Upon them the court below ordered a verdict and judgment in defendant's favor. *Held*, that the peremptory instruction by the trial court and the affirmance of its action by the appellate court manifestly proceeded not on the theory that, as a matter of law, there was no negligence on the part of the defendant, but that the proof of contributory negligence on the part of the plaintiff was so conclusive as to leave no question for the consideration of the jury ;

THE ST. ANTHONY FALLS WATER POWER COM- PANY, Appellant, <i>vs.</i> BOARD OF WATER COMMISSIONERS OF THE CITY OF ST. PAUL, Respondent.	}	Cal. No., 326; Reg. No., 8984.
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This cause came on to be heard this day upon the return to the appeal herein.

Thereupon, pursuant to stipulation of counsel for the respective parties, this cause was placed upon the calendar of the April term of this court, A. D. 1894.

Now, after due deliberation thereon had, it is ordered that the judgment of the court below be, and the same is, affirmed for the reasons expressed in the former opinion of this court on the appeal from the order of the court below.

A true record.

Attest:

C. P. HOLCOMB, *Clerk.*

The foregoing is a full and true copy of the minutes of argument and order in the above-entitled cause.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB, *Clerk.*

[Endorsed:] 8984. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 28, A. D. 1894. C. P. Holcomb, clerk.

136 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

THE ST. ANTHONY FALLS WATER POWER COMPANY, Appellant, <i>vs.</i> THE BOARD OF WATER COMMISSIONERS OF THE CITY OF ST. PAUL, Respondent.	}	No. 326.
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Pursuant to an order of court duly made and entered in this cause on the eighteenth day of July, A. D. 1894—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the fourth judicial district, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondent above named do have and recover of said The St. Anthony Falls Water Power Company, appellant herein, the sum and amount of thirty-one & $\frac{50}{100}$ dollars (\$31.50), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 23th day of July, 1894.

By the court.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB, *Clerk.*

Statement for Judgment.

Costs allowed by statute.....	\$25 00
Clerk's fees for making return.....	
Printer's fees.....	
Clerk's fees, supreme court.....	6 50
Filing mandate and docketing transcript.....	
Affidavits and acknowledgments.....	
Postage	
Copying return for printer....	
	<hr/>
	\$31 50

137 [Endorsed:] State of Minnesota, supreme court. The St. Anthony Falls Water Power Company, appellant, *vs.* The Board of Water Commissioners of St. Paul, resp't. Transcript of judgment.

STATE OF MINNESOTA, }
Supreme Court, } ss:

I, C. P. Holcomb, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 28th day of July, A. D. 1894.

C. P. HOLCOMB, *Clerk.*

138 [Endorsed:] No. 8984. State of Minnesota, supreme court. The St. Anthony Falls Water Power Company, app't, against Board of Water Commissioners of St. Paul, respondent. Judgment-roll. Filed July 28th, 1894. C. P. Holcomb, clerk.

139 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1894.

JULY 18TH, A. D. 1894,

Wednesday morning, 9.30 o'clock.

Court convened pursuant to adjournment, all the justices being present except Associate Justice Buck.

THE MINNEAPOLIS MILL COMPANY, Appellant,	} Cal. No., 325; Reg. No., 8983.
<i>vs.</i>	
BOARD OF WATER COMMISSIONERS OF THE CITY OF ST. PAUL, Respondent.	

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon, pursuant to stipulation of counsel for the respective

parties, this cause was placed upon the calendar of the April term of this court, A. D. 1894.

Now, after due deliberation thereon had, it is ordered that the judgment of the court below be, and the same is, affirmed for the reasons expressed in the former opinion of this court on the appeal from the order of the court below.

A true record.

Attest:

C. P. HOLCOMB, *Clerk*.

The foregoing is a full and true copy of the minutes of argument and order in the above-entitled cause.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB, *Clerk*.

[Endorsed:] 8983. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 28, A. D. 1894. C. P. Holcomb, clerk.

110 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1894.

THE MINNEAPOLIS MILL COMPANY, Appellant,	}	No. 325.
<i>vs.</i>		
THE BOARD OF WATER COMMISSIONERS OF ST. PAUL, Respondent.		

Pursuant to an order of court duly made and entered in this cause on the eighteenth day of July, A. D. 1894—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the fourth judicial district, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondent above named do have and recover of said Minneapolis Mill Company, appellant herein, the sum and amount of thirty-one & ⁵⁰/₁₀₀ dollars (\$31.50), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 28th day of July, 1894.

By the court.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB, *Clerk*.

Statement for Judgment.

Costs allowed by statute.....	\$25 00
Clerk's fees for making return	
Printer's fees.....	
Clerk's fees, supreme court.....	6 50
Filing mandate and docketing transcript.....	
Affidavits and acknowledgments	
Postage	
Copying return for printer.....	
	<hr/>
	\$31 50

141 [Endorsed:] State of Minnesota, supreme court. The Minneapolis Mill Company, appellant, *vs.* The Board of Water Commissioners of St. Paul, respondent. Transcript of judgment.

STATE OF MINNESOTA, }
Supreme Court, } ss.:

I, C. P. Holcomb, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 28th day of July, A. D. 1894.

C. P. HOLCOMB, *Clerk.*

142 [Endorsed:] No. 8983. State of Minnesota, supreme court. The Minneapolis Mill Company, appellant, against The Board of Water Commissioners of St. Paul, respondent. Judgment-roll. Filed July 28th, 1894. C. P. Holcomb, clerk.

143 To the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota:

The petition of the St. Anthony Falls Water Power Company, a corporation of the State of Minnesota, respectfully shows—

That on the 28th day of July, A. D. 1894, a final judgment was entered in said supreme court, the same being the tribunal having jurisdiction under the laws of said State of Minnesota to render final judgment in all proceedings of such nature, in an action or proceeding wherein this petitioner was plaintiff and The Board of Water Commissioners of the City of St. Paul, a corporation, was defendant.

That in and by said proceeding it was made to appear that said plaintiff, this petitioner, was the owner of a parcel of land abutting on the Mississippi river and on the easterly side thereof at and adjacent to the falls of St. Anthony, in said river and within the said State of Minnesota, upon which land and in the bed of said river

this petitioner had dams and other structures for the purpose of making use of the water power to be derived from the flow of the water of said river over said falls and adjacent to the land so owned by this petitioner, and that the said defendant was, by certain structures upon one of the streams tributary to said river and above said falls, *was* diverting a large amount of the water of said river which but for said diversion would flow in said river over said dams and structures of the petitioner, and so be made available for the use of this petitioner in the increase of its said water power.

And this petitioner further shows that in the said proceeding it claimed that by the construction and effect of the laws of the United States and the enactments of the Congress thereof regulating the sales of the public lands of the United States, including all the lands within said State of Minnesota abutting upon said Mississippi river and through which sales this petitioner derived its ownership of said parcel of land, that it, the said petitioner, plaintiff in said proceeding, was entitled to have and enjoy the full natural flow of the waters of said river and the right to make use of the same for the benefit of its water power and for all other useful purposes to which said flow is adapted without material diversion thereof by said defendant or any other person, and that the final judgment
144 and decision of said supreme court was against the right so claimed by this petitioner.

And this petitioner further shows that in the said proceeding it was further claimed by this petitioner, as such plaintiff, that by the construction and effect of that special enactment of the legislative assembly of the Territory of Minnesota entitled An act to incorporate the St. Anthony Falls Water Power Company, approved February 26, 1857, there was granted to this petitioner by said legislative assembly in the exercise of authority granted said assembly by the laws of the United States, which enactments were made subject to the revision and approval of the Congress of the United States, the right and authority to erect dams in the bed of said Mississippi river adjacent to its said lands abutting on said river for the purpose of improving the said water power, together with the right to make use of the water flowing in said Mississippi river and the whole thereof, and the right to have and enjoy the use of all the water which would naturally flow in said river without any material diversion thereof by defendant or any other person, and that the final judgment and decision of said supreme court in said proceeding was against the right so claimed by this petitioner.

And this petitioner further shows that in the said proceeding it was further claimed by this petitioner, as such plaintiff, that by the construction and effect of the laws and statutes of the Congress of the United States authorizing the people of Minnesota to form a constitution and State government preparatory to admission into the Union and admitting Minnesota into the Union this petitioner's rights to the use of all the water naturally flowing in said Mississippi river past its said riparian lands was not subject and could not be made subject to the use and diversion shown to have been made by defendant, Board of Water Commissioners, and that the

final judgment — decision of said supreme court in said proceeding was against the right so claimed by this petitioner.

And this petitioner further shows that in and by said proceeding said defendant claimed the right to divert said waters from the natural flow of the waters of said Mississippi river by virtue of a grant from the legislature of the State of Minnesota by the act entitled "An act to amend and to consolidate an act to authorize the city of St. Paul to purchase the franchise and property of the St. Paul Water Company and creating a board of water commissioners, approved February 10, 1881, and the act amendatory thereof, approved the 25th day of January, A. D. 1883," approved March 4, 1885; and this petitioner claimed that the said enactment of the said legislature of the State of Minnesota was and is inoperative and void, inasmuch as the same is contrary to the provisions of section 1, article XIV, of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge a privilege or immunity of any citizen of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and this petitioner further claimed on said trial and in said proceeding that the enactment was also contrary to section 14 of article I of said Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, inasmuch as it impaired the force of the contract made with this petitioner by the act of its incorporation, being the same act of the legislative assembly of the Territory of Minnesota hereinabove referred to; but the final judgment and decision of said supreme court of Minnesota was in favor of the claims of said defendant under the said enactment and against the claims of this petitioner that said enactment was invalid.

All which claims and decisions more fully appear by the records of said proceeding now remaining in said supreme court.

Wherefore, forasmuch as your petitioner believes there was manifest error in the said decisions of said court against the said several claims of this petitioner, as hereinabove set forth, and in the final judgment in said action or proceeding, which is to the great damage of this petitioner, this petitioner prays that your honor will examine the records of said supreme court of Minnesota in that behalf and allow to this petitioner a writ of error, to the end that said judgment and record may be brought before the Supreme Court of the United States, agreeable to the laws of the United States in that behalf enacted.

ST. ANTHONY FALLS WATER
POWER CO., *Petitioner*,
By WM. DE LA BARRE, *Treas.*

BENTON, ROBERTS & BROWN,
Attorney for Petitioner.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Wm. de la Barre, being duly sworn, on oath states that he resides in Hennepin county and is the treasurer of the petitioner corporation named in the above petitioner; that he has subscribed to the same; that he has read said petition and knows the contents thereof, and that the same is true to the knowledge of deponent.

WM. DE LA BARRE.

Subscribed and sworn to before me this 9th day of August, 1894.
[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

Upon reading the above petition, upon said petition and upon the record submitted therewith, I hereby allow the writ of error prayed for therein.

JAMES GILFILLAN,
Chief Justice Supreme Court State of Minnesota.

147 [Endorsed:] 8984. State of Minnesota, supreme court. St. Anthony Falls Water Power Company, petitioner, vs. Board of Water Commissioners of the City of St. Paul. Petition for writ of error. Benton, Roberts & Brown, attorneys for petitioner, 1004 Guaranty Loan building, Minneapolis, Minn.

Endorsed: Filed Aug. 9, 1894. C. P. Holcomb, clerk.

148 To the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota:

The petition of the Minneapolis Mill Company, a corporation of the State of Minnesota, respectfully shows—

That on the 28th day of July, A. D. 1894, a final judgment was entered in said supreme court, the same being the tribunal having jurisdiction under the laws of said State of Minnesota to render final judgment in all proceedings of such nature, in an action or proceeding wherein this petitioner was plaintiff and The Board of Water Commissioners of the City of St. Paul, a corporation, was defendant.

That in and by said proceeding it was made to appear that said plaintiff, this petitioner, was the owner of a parcel of land abutting on the Mississippi river and on the westerly side thereof at and adjacent to the falls of St. Anthony, in said river and within the said State of Minnesota, upon which land and in the bed of said river this petitioner had dams and other structures for the purpose of making use of the water power to be derived from the flow of the water of said river over said falls and adjacent to the land so owned by this petitioner, and that the said defendant was by certain structures upon one of the streams tributary to said river and above said falls was diverting a large amount of the water of said river, which but for said diversion would flow in said river over said dams and structures of the petitioner, and so be made available for the use of this petitioner in the increase of its said water power.

And this petitioner further shows that in the said proceeding it claimed that by the construction and effect of the laws of the United States and the enactments of the Congress thereof regulating the sales of the public lands of the United States, including all the lands within said State of Minnesota abutting upon said Mississippi river, and through which sales this petitioner derived its ownership of said parcel of land, that it, the said petitioner, plaintiff in said proceeding, was entitled to have and enjoy the full natural flow of the waters of said river and the right to make use of the same for the benefit of its water power and for all other useful purposes to which said flow is adapted without material diversion thereof by said defendant or any other person, and that the

149 final judgment and decision of said supreme court was against the right so claimed by this petitioner.

And this petitioner further shows that in the said proceeding it was further claimed by this petitioner, as such plaintiff, that by the construction and effect of that special enactment of the legislative assembly of the Territory of Minnesota entitled An act to incorporate the Minneapolis Mill Company, approved February 27, 1856, there was granted to this petitioner by said legislative assembly, in the exercise of authority granted said assembly by the laws of the United States, which enactments were made subject to the revision and approval of the Congress of the United States, the right and authority to erect dams in the bed of said Mississippi river adjacent to its said lands abutting on said river, for the purpose of improving the said water power, together with the right to make use of the water flowing in said Mississippi river and the whole thereof, and the right to have and enjoy the use of all the water which would naturally flow in said river without any material diversion thereof by defendant or any other person, and that the final judgment and decision of said supreme court in said proceeding was against the right so claimed by this petitioner.

And this petitioner further shows that in the said proceeding it was further claimed by this petitioner, as such plaintiff, that by the construction and effect of the laws and statutes of the Congress of the United States authorizing the people of Minnesota to form a constitution and State government preparatory to admission into the Union and admitting Minnesota into the Union this petitioner's rights to the use of all the water naturally flowing in said Mississippi river past its said riparian lands was not subject and could not be made subject to the use and diversion shown to have been made by defendant, Board of Water Commissioners, and that final judgment — decision of said supreme court in said proceeding was against the right so claimed by this petitioner.

And this petitioner further shows that in and by said proceeding said defendant claimed the right to divert said waters from the natural flow of the waters of said Mississippi river by virtue of a grant from the legislature of the State of Minnesota by the act entitled "An act to amend and to consolidate an act to authorize
150 the city of St. Paul to purchase the franchise and property of the St. Paul Water Company, and creating a board of

water commissioners, approved February 10, 1881, and the act amendatory thereof, approved the 25th day of January, A. D. 1883," approved March 4, 1885; and this petitioner claimed that the said enactment of the said legislature of the State of Minnesota was and is inoperative and void, inasmuch as the same is contrary to the provisions of section 1, article XIV, of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge a privilege or immunity of any citizen of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and this petitioner further claimed on said trial and in said proceeding that the enactment was also contrary to section 14 of article I of said Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, inasmuch as it impaired the force of the contract made with this petitioner by the act of its incorporation, being the same act of the legislative assembly of the Territory of Minnesota hereinabove referred to; but the final judgment and decision of said supreme court of Minnesota was in favor of the claims of said defendant under the said enactment and against the claims of this petitioner that said enactment was invalid.

All which claims and decisions more fully appear by the records of said proceeding now remaining in said supreme court.

Wherefore, forasmuch as your petitioner believes there was manifest error in the said decisions of said court against the said several claims of this petitioner as hereinabove set forth and in the final judgment in said action or proceeding, which is to the great damage of this petitioner, this petitioner prays that your honor will examine the records of said supreme court of Minnesota in that behalf and allow to this petitioner a writ of error, to the end that

151 said judgment and record may be brought before the Supreme Court of the United States, agreeable to the laws of the United States in that behalf enacted.

MINNEAPOLIS MILL CO., *Petitioner*,
By WM. DE LA BARRE, *Treas.*

BENTON, ROBERTS & BROWN,
Attorney for Petitioner.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Wm. de la Barre, being duly sworn, on oath states that he resides in Hennepin county and is the treasurer of the petitioner corporation named in the above petition; that he has subscribed to the same; that he has read said petition and knows the contents thereof, and that the same is true to the knowledge of deponent.

WM. DE LA BARRE.

Subscribed and sworn to before me this 9th day of August, 1894.
[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

Upon reading the above petition, upon said petition and upon the record submitted therewith, I hereby allow the writ of error prayed for therein.

JAMES GILFILLAN,
Chief Justice Supreme Court, State of Minnesota.

152 [Endorsed:] 8983. Supreme court of the State of Minnesota. Minneapolis Mill Company, petitioner, *vs.* Board of Water Commissioners of the City of St. Paul. Petition for writ of error. Benton, Roberts & Brown, attorneys for petitioner, 1004 Guaranty Loan building, Minneapolis, Minn.

Endorsed: Filed August 9, 1894. C. P. Holcomb, clerk.

153 Know all men by these presents that we, The St. Anthony Falls Water Power Company of Minneapolis, Minnesota, as principal, and Charles A. Pillsbury and William de la Barre, both of Minneapolis, as sureties, are held and firmly bound unto The Board of Water Commissioners of the City of St. Paul in the full and just sum of one thousand dollars, to be paid to the said Board of Water Commissioners of the City of St. Paul, their attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of August, 1894.

Whereas, in the supreme court of the State of Minnesota, in a suit pending in said court between the said St. Anthony Falls Water Power Company, as plaintiff and appellant, and the said Board of Water Commissioners of the City of St. Paul, as defendant and respondent, judgment was rendered against the said St. Anthony Falls Water Power Company, whereby a certain judgment of the district court of the fourth judicial district in and for the county of Hennepin, Minnesota, dismissing said action and for thirty-three dollars and three cents as costs and disbursements of said suit, was affirmed by said supreme court, and awarding judgment against the said St. Anthony Falls Water Power Company for the costs and disbursements of said proceeding, taxed at thirty-one dollars and fifty cents, and the said St. Anthony Falls Water Power Company, plaintiff, appellant, having obtained a writ of error, and filed the same in the clerk's office of said supreme court, to reverse the judgment in said court, and a citation directed to Board of Water Commissioners of the City of St. Paul, the defendant and respondent aforesaid, citing and admonishing said Board of Water Commissioners of the City of St. Paul to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said St. Anthony Falls Water Power Company shall prosecute said writ of error to effect and answer and pay all damages and costs if it fail

154 to make its appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

ST. ANTHONY FALLS WATER
POWER COMPANY,

[SEAL.]

By WM. DE LA BARRE, *Its Treasurer*.
CHAS. A. PILLSBURY.
WM. DE LA BARRE.

Signed, sealed, and delivered in presence of—

L. P. HUBBARD.
ROME G. BROWN.

STATE OF MINNESOTA, }
County of Hennepin, } ss :

On this 9th day of August, 1894, before me, a notary public within and for said county, personally appeared Charles A. Pillsbury and William de la Barre, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed; and on the same day before me appeared William de la Barre, to me personally known, who, being by me duly sworn, did say that he is the treasurer of the St. Anthony Falls Water Power Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said William de la Barre acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

155 STATE OF MINNESOTA, }
County of Hennepin, } ss :

Charles A. Pillsbury and Wm. de la Barre, being duly sworn, says, each for himself, that he is one of the sureties above named; that he is a resident and freeholder of the State of Minnesota and worth the amount of one thousand dollars specified in the foregoing bond above his debts and liabilities and exclusive of his property exempt from execution.

CHARLES A. PILLSBURY.
WM. DE LA BARRE.

Subscribed and sworn to before me this 9th day of August, 1894.

[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

I hereby approve the foregoing bond both as to the form and sufficiency of its sureties.

LEON T. CHAMBERLAIN,
WALTER L. CHAPIN,
Attorneys for Defendant in Error.

The above bond approved by me—

JAMES GILFILLAN,
Chief Justice Supreme Court State of Minnesota.

156 [Endorsed:] 8984. Supreme Court of the United States.
St. Anthony Falls Water Power Company, plaintiff in error,
vs. Board of Water Commissioners of the City of St. Paul, defend-
ant in error. Bond on writ of error.

Endorsed: Filed August 9, 1894. C. P. Holcomb, clerk.

157 Know all men by these presents that we, The Minneapolis
Mill Company of Minneapolis, Minnesota, as principal, and
Charles A. Pillsbury and Wm. de la Barre, both of Minneapolis, as
sureties, are held and firmly bound unto The Board of Water Commis-
sioners of the City of St. Paul in the full and just sum of one thou-
sand dollars, to be paid to the said Board of Water Commissioners of
the City of St. Paul, their attorneys, executors, administrators, and
assigns; to which payment, well and truly to be made, we bind
ourselves, executors, and administrators, jointly and severally, by
these presents.

Sealed with our seals and dated this 9th day of August, 1894.

Whereas, in the supreme court of the State of Minnesota, in a suit
pending in said court between the said Minneapolis Mill Company,
as plaintiff and appellant, and the said Board of Water Commis-
sioners of the City of St. Paul, as defendant and respondent, judg-
ment was rendered against the said Minneapolis Mill Company,
whereby a certain judgment of the district court of the fourth judi-
cial district in and for the county of Hennepin, Minnesota, dismiss-
ing said action and for *ninety* thirty-three dollars and three cents as
costs and disbursements of said suit, was affirmed by said supreme
court, and awarding judgment against the said Minneapolis Mill
Company for the costs and disbursements of said proceeding, taxed
at thirty-one dollars and fifty cents, and the said Minneapolis Mill
Company, plaintiff, appellant, having obtained a writ of error and
filed the same in the clerk's office of said supreme court to reverse
the judgment in said court, and a citation directed to Board of Water
Commissioners of the City of St. Paul, the defendant and respondent
aforesaid, citing and admonishing said Board of Water Commis-
sioners of the City of St. Paul to be and appear at the Supreme Court
of the United States, to be holden at Washington on the second
Monday of October next:

Now, the condition of the above obligation is such that if the said
Minneapolis Mill Company shall prosecute said writ of error to
effect and answer and pay all damages and costs if it fail to make
its appeal good, then the above obligation to be void; other-
wise to remain in full force and effect.

[SEAL.]

MINNEAPOLIS MILL COMPANY,
By CHARLES A. PILLSBURY, *Its Pres't.*
CHAS. A. PILLSBURY,
WM. DE LA BARRE.

Signed, sealed, and delivered in presence of—

L. P. HUBBARD.
ROME G. BROWN.

STATE OF MINNESOTA, }
 County of Hennepin, } ss :

On this 9th day of August, 1894, before me, a notary public within and for said county, personally appeared Charles A. Pillsbury and William de la Barre, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed; and on the same day before me appeared Charles A. Pillsbury, to me personally known, who, being by me duly sworn, did say that he is the president of the Minneapolis Mill Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said ——— acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

159 STATE OF MINNESOTA, }
 County of Hennepin, } ss :

Charles A. Pillsbury and Wm. de la Barre, being duly sworn, each for himself, says that he is one of the sureties above named; that he is a resident and freeholder of the State of Minnesota and worth the amount of one thousand dollars specified in the foregoing bond above his debts and liabilities and exclusive of his property exempt from taxation.

CHARLES A. PILLSBURY.
 WM. DE LA BARRE.

Subscribed and sworn to before me this 9th day of August, 1894.

[NOTARIAL SEAL.]

ROME G. BROWN,
Notary Public, Hennepin Co., Minn.

I hereby approve the foregoing bond both as to the form and sufficiency of its sureties.

LEON T. CHAMBERLAIN,
 WALTER L. CHAPIN,
Attorney for Defendant in Error.

The above bond approved by me—

JAMES GILFILLAN,
Chief Justice Supreme Court State of Minnesota.

160 [Endorsed:] 8983. Supreme Court of the United States.
 Minneapolis Mill Company, plaintiff in error, vs. Board of
 Water Commissioners of the City of St. Paul, defendant in error.
 Bond on writ of error.

Endorsed: Filed August 9, 1894. C. P. Holcomb, clerk.

161 In the Supreme Court of the United States.

ST. ANTHONY FALLS WATER POWER COMPANY, Plaintiff in Error, }
vs.
 THE BOARD OF WATER COMMISSIONERS OF THE CITY OF ST. PAUL, }
 Defendant in Error.

Writ of error to the supreme court of the State of Minnesota.

Assignment of Errors.

The said plaintiff in error, by Reuben C. Benton, its attorney, comes and says that in the record and proceedings in the said suit in said supreme court of the State of Minnesota there is manifest error in this :

I.

That the said court held the statutes of Minnesota entitled "An act to amend and consolidate an act to authorize the city of St. Paul to purchase the franchise and property of the St. Paul Water Company, and creating a board of water commissioners, approved February 10, 1881, and the act amendatory thereof approved the 25th day of January, A. D. 1883," approved March 4th, 1885, being chapter 110 of the Special Laws of Minnesota of the Year 1885, in so far as it authorized the diversion of water by said defendant in error from the Mississippi river above the water power of plaintiff in error without compensation to plaintiff in error, to be valid and not in conflict with the provisions of the Constitution of the United States, whereas the said act was invalid and contrary to the provisions of the Constitution of the United States on each of the following grounds :

1. That in so authorizing such diversion the said act is contrary to section 1 of article XIV of the Constitution of the United States in that it deprives said plaintiff in error of its property without due process of law.

2. That the said act is contrary to the provisions of section 1, article XIV, of the Constitution of the United States in that it abridges the privileges and immunities of the plaintiff in error, a citizen of the United States.

3. That said act is contrary to the provisions of section 1, article XIV, of the Constitution of the United States in that it denies to the plaintiff in error the equal protection of the laws.

162 4. That said act is contrary to the provisions of section 14 of article I of the Constitution of the United States in that it impairs the obligation of the contract rights of plaintiff in error which are vested in plaintiff in error by virtue of its charter.

II.

The said supreme court erred in holding that by the construction and effect of the charter of this plaintiff in error, being the act en-

titled "An act to incorporate the St. Anthony Falls Water Power Company," approved February 26th, 1857, the same being chapter 137 of the laws passed by the legislative assembly of the Territory of Minnesota, under and by virtue of an authority of the statutes of the United States, that the said plaintiff in error did not have a vested right to the use of all the waters naturally flowing past its lands and structures in the Mississippi river not subject to a diversion by defendant in error above the lands and structures of said plaintiff in error without compensation to the said plaintiff in error.

III.

1. In holding that by the construction and effect of the statutes of the United States authorizing the people of Minnesota to form a public government and providing for the admission of the State of Minnesota into the Union that the State of Minnesota is not restricted and prohibited from any interest or use of the waters of the Mississippi river which are in conflict with or in derogation of the use of said Mississippi river as a public highway, and that by the said statutes of the United States the said State of Minnesota is not prohibited and forbidden from diverting said waters and from authorizing a diversion of said waters for the uses of defendant in error such as are shown in the record.

2. In holding that by the construction and effect of the said statutes of the United States the rights of the plaintiff in error to the use of the waters naturally flowing in said Mississippi river past its lands and structures was subject to the right of the State to make or authorize to be made a diversion of such waters for the use of the defendant in error.

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IV.

1. The said court erred further in holding that by the construction and effect of the statutes of the United States relating to the sale of public lands plaintiff in error did not acquire nor hold, by virtue of the original patents from the United States of lands upon the Mississippi river as appurtenant and parcel of those lands, the rights to the use of waters of said river naturally flowing past its said lands and not subject to the diversion by defendant in error without compensation to plaintiff in error.

2. Said court erred in holding that by the construction and effect of the said statutes of the United States plaintiff in error did not acquire nor hold, by virtue of the original patents from the United States of lands on the Mississippi river as appurtenant and parcel of those lands, the right to the use of waters of said river naturally flowing past its said lands and not subject to any right, title, or interest in the State of Minnesota or the people thereof, to divert said waters or to authorize such diversion for the purposes and in the manner shown in the record herein, without compensation to plaintiff in error.

Wherefore the said plaintiff in error prays that said judgment of the supreme court of the State of Minnesota be reversed and au-

nulled, and that said plaintiff in error may be restored to all things which it has lost by reason of said judgment, and that judgment be rendered in its favor and against said defendant in error.

REUBEN C. BENTON,
BENTON, ROBERTS & BROWN,
Attorneys for said Plaintiff in Error.

164 [Endorsed:] 8984. Supreme Court of the United States.
St. Anthony Falls Water Power Company, plaintiff in error,
vs. Board of Water Commissioners of the City of St. Paul, defendant
in error. Assignment of errors.

Endorsed: Filed August 9, 1894. C. P. Holcomb, clerk.

165 In the Supreme Court of the United States.

MINNEAPOLIS MILL COMPANY, Plaintiff in Error,
vs.

THE BOARD OF WATER COMMISSIONERS OF THE CITY OF ST. PAUL,
Defendant in Error. }

Writ of error to the supreme court of the State of Minnesota.

Assignment of Errors.

The said plaintiff in error, by Reuben C. Benton, its attorney, comes and says that in the record and proceedings in the said suit in said supreme court of the State of Minnesota there is manifest error in this:

I.

That the said court held the statute of Minnesota entitled "An act to amend and consolidate an act to authorize the city of St. Paul to purchase the franchise and property of the St. Paul Water Company and creating a board of water commissioners, approved February 10, 1881, and the act amendatory thereof approved the 25th day of January, A. D. 1883," approved March 4th, 1885, being chapter 119 of the Special Laws of Minnesota of the Year 1885, in so far as it authorized the diversion of water by said defendant in error from the Mississippi river above the water power of plaintiff in error without compensation to plaintiff in error, to be valid and not in conflict with the provisions of the Constitution of the United States, whereas the said act was invalid and contrary to the provisions of the Constitution of the United States on each of the following grounds:

1. That in so authorizing such diversion the said act is contrary to section 1 of article XIV of the Constitution of the United States in that it deprives said plaintiff in error of its property without due process of law.

2. That the said act is contrary to the provisions of section 1, article XIV, of the Constitution of the United States in that it abridges the privileges and immunities of the plaintiff in error, a citizen of the United States.

3. That said act is contrary to the provisions of section 1, article XIV, of the Constitution of the United States in that it denies to the plaintiff in error the equal protection of the laws.

166 4. That said act is contrary to the provisions of section 14 of article I of the Constitution of the United States in that it impairs the obligation of the contract right- of the plaintiff in error which are vested in plaintiff in error by virtue of its charter.

II.

The said supreme court erred in holding that by the construction and effect of the charter of this plaintiff in error, being the act entitled "An act to incorporate the Minneapolis Mill Company," approved February 27th, 1856, the same being chapter 145 of the laws passed by the legislative assembly of the Territory of Minnesota, under and by virtue of an authority of the statutes of the United States, that the said plaintiff in error did not have a vested right to the use of all the waters naturally flowing past its lands and structures in the Mississippi river not subject to a diversion by defendant in error above the lands and structures of said plaintiff in error without compensation to the said plaintiff in error.

III.

1. In holding that by the construction and effect of the statutes of the United States authorizing the people of Minnesota to form a public government and providing for the admission of the State of Minnesota into the Union that the State of Minnesota is not restricted and prohibited from any interest or use of the waters of the Mississippi river which are in conflict with or in derogation of the use of said Mississippi river as a public highway, and that by the said statutes of the United States the said State of Minnesota is not prohibited and forbidden from diverting said waters and from authorizing a diversion of said waters for the uses of defendant in error such as are shown in the record.

2. In holding that by the construction and effect of the said statutes of the United States the rights of the plaintiff in error to the use of the waters naturally flowing in said Mississippi river past its lands and structures was subject to the right of the State to make or authorize to be made a diversion of such waters for the use of the defendant in error.

167

IV.

1. The said court erred further in holding that by the construction and effect of the statutes of the United States relating to the sale of public lands plaintiff in error did not acquire nor hold, by virtue of the original patents from the United States of lands upon the Mississippi river as appurtenant and parcel of those lands, the right to the use of waters of said river naturally flowing past its said lands and not subject to the diversion by defendant in error without compensation to the plaintiff in error.

2. Said court erred in holding that by the construction and effect of the said statutes of the United States plaintiff in error did not acquire nor hold, by virtue of the original patents from the United States of lands on the Mississippi river as appurtenant and parcel of those lands, the right to the use of waters of said river naturally flowing past its said lands and not subject to any right, title, or interest in the State of Minnesota or the people thereof to divert said waters or to centralize such diversion for the purposes and in the manner shown in the record herein, without compensation to plaintiff in error.

Wherefore the said plaintiff in error prays that said judgment of the supreme court of the State of Minnesota be reversed and annulled, and that said plaintiff in error may be restored to all things which it has lost by reason of said judgment, and that judgment be rendered in its favor and against said defendant in error.

REUBEN C. BENTON,
BENTON, ROBERTS & BROWN,
Attorneys for Plaintiff in Error.

168 [Endorsed:] 8983. Supreme Court of the United States. Minneapolis Mill Company, plaintiff in error, *vs.* Board of Water Commissioners of the City of St. Paul, defendant in error. Assignment of errors.

Endorsed: Filed August 9, 1894. C. P. Holcomb, clerk.

169 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The St. Anthony Falls Water Power Company, a corporation, plaintiff, appellant, and The Board of Water Commissioners of the City of St. Paul, defendant, respondent, wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the said decision was in favor of such their validity, and wherein was drawn in question the construction and effect of certain statutes of the United States and the decision was against the title, right, and privilege specially set up and claimed under the said statutes of the United States, and manifest error hath happened, to the great damage of the said St. Anthony Falls Water Power Company, as by its complaint appears, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this U. S. Circuit Court Seal, 9th day of Aug., in the year of our Lord Dist. of Minnesota, one thousand eight hundred and ninety-four, and of the Independence of the United States the —.

OSCAR B. HILLIS,
*Clerk of the Circuit Court of the United States of
America for the District of Minnesota.*

The foregoing writ allowed by me this 9th day of August, A. D. 1894.

JAMES GILFILLAN,
Chief Justice of the Supreme Court of the State of Minnesota.

170 [Endorsed:] 8984. Original. Supreme Court of the United States. St. Anthony Falls Water Power Company, plaintiff in error, *vs.* Board of Water Commissioners of the City of St. Paul, defendant in error. Writ of error. Filed August 9, 1894. C. P. Holcomb, clerk.

171 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The Minneapolis Mill Company, a corporation, plaintiff, appellant, and The Board of Water Commissioners of the City of St. Paul, defendant, respondent, wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the said decision was in favor of such their validity, and wherein was drawn in question the construction and effect of certain statutes of the United States and the decision was against the title, right, and privilege specially set up and claimed under the said statutes of the United States, and manifest error hath happened, to the great damage of the said Minneapolis Mill Company, as by its complaint appears, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid

in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of Aug., in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the —.

OSCAR B. HILLIS,

*Clerk of the Circuit Court of the United States of
America for the District of Minnesota.*

The foregoing writ allowed by me this 9th day of August, A. D. 1894.

JAMES GILFILLAN,

Chief Justice Supreme Court State of Minnesota.

172 [Endorsed:] Original. 8983. Supreme Court of the United States. Minneapolis Mill Company, plaintiff in error, *vs.* Board of Water Commissioners of the City of St. Paul, defendant in error. Writ of error. Filed August 9, 1894. C. P. Holcomb, clerk.

173 THE UNITED STATES OF AMERICA:

The President of the United States to the Board of Water Commissioners of the City of St. Paul, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota in an action wherein The St. Anthony Falls Water Power Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota, this 9th day of August, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES GILFILLAN,

Chief Justice of the Supreme Court, State of Minnesota.

Due and personal service of the above citation is hereby admitted this 9th day of August, 1894.

LEON T. CHAMBERLAIN,
WALTER L. CHAPIN,
Attorney- for Defendant in Error.

174 STATE OF MINNESOTA, }
County of Ramsey, } ss :

Rome G. Brown, being first duly sworn, on his oath says that at the city of St. Paul, Ramsey county, Minnesota, on the tenth day of August, 1894, he served the within citation upon The Board of Water Commissioners of the City of St. Paul, defendant in error, by handing to and leaving with John Caulfield, the secretary of said board of water commissioners, a true and correct copy of said citation, and deponent did at the same time show to said Caulfield this original citation and the signature of Chief Justice Gilfillan attached thereto.

ROME G. BROWN.

Subscribed and sworn to before me this tenth day of August, 1894.

[Notarial Seal, Ramsey County, Minn.]

WALTER L. CHAPIN,
Notary Public, Ramsey County, Minn.

175 [Endorsed:] Original. 8984. Supreme Court of the United States. St. Anthony Falls Water Power Company, plaintiff in error, vs. Board of Water Commissioners of the City of St. Paul, defendant in error. Citation and proof of service. Filed August 9, 1894. C. P. Holcomb, clerk.

176 THE UNITED STATES OF AMERICA :

The President of the United States to the Board of Water Commissioners of the City of St. Paul, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota in an action wherein The Minneapolis Mill Company is plaintiff in error and you are defendant in error, to show cause, of any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota, this 9th day of August, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES GILFILLAN,
Chief Justice of the Supreme Court, State of Minnesota.

Due and personal service of the above citation is hereby admitted this 9th day of August, 1894.

LEON T. CHAMBERLAIN,
WALTER L. CHAPIN,
Attorneys for Defendant in Error.

177 STATE OF MINNESOTA, } ss :
County of Ramsey, }

Rome G. Brown, being first duly sworn, on his oath says that at the city of St. Paul, Ramsey county, Minnesota, on the tenth day of August, 1894, he served the within citation upon The Board of Water Commissioners of the City of St. Paul, defendant in error, by handing to and leaving with John Caulfield, the secretary of said board of water commissioners, a true and correct copy of said citation, and deponent did at the same time show to said Caulfield this original citation and the signature of Chief Justice Gilfillan attached thereto.

ROME G. BROWN.

Subscribed and sworn to before me this tenth day of August, 1894.

[Notarial Seal, Ramsey County, Minn.]

WALTER L. CHAPIN,
Notary Public, Ramsey County, Minn.

178 [Endorsed:] 8983. Original. Supreme Court of the United States. Minneapolis Mill Company, plaintiff in error, vs. Board of Water Commissioners of the City of St. Paul, defendant in error. Citation and proof of service. Filed August 9, 1894. C. P. Holcomb, clerk.

179 State of Minnesota Supreme Court.

STATE OF MINNESOTA, } ss :
Office of Clerk of Supreme Court, }

I, C. P. Holcomb, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The Saint Anthony Falls Water Power Company, plaintiff, appellant, against The Board of Water Commissioners of the City of St. Paul, defendant, respondent, and in the case of The Minneapolis Mill Company, plaintiff, appellant, against The Board of Water Commissioners of the City of St. Paul, defendant, respondent, including the opinion of the said supreme court therein, as appears from the original files and records of said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith, and that the foregoing are, copies

of the petitions for writs of error, bonds on writs of error and approvals thereof, assignments of error in both of said causes, as the same remain on file and of record in said supreme court of the State of Minnesota, and the original writs of error from the Supreme Court of the United States and the original citations issued thereon, with proof of service thereof, in both said causes, and that the foregoing constitutes a true, full, and complete return to said writs of error.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 21st day of August, A. D. 1894.

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB,

Clerk of the Supreme Court of the State of Minnesota.

Endorsed on cover: Case No. 15,683. Minnesota supreme court. Term No., 168. The St. Anthony Falls Water Power Company, plaintiff in error, *vs.* The Board of Water Commissioners of the City of St. Paul. Case No. 15,684. Term No., 169. The Minneapolis Mill Company, plaintiff in error, *vs.* The Board of Water Commissioners of the City of St. Paul. Filed September 17, 1894.

